

CIVILIAN CONTROL OVER THE MILITARY IN THE CONTEXT OF PARLIAMENTARY ELECTION



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Transparency and controllability of the process of functioning of power structures (and the state apparatus in general), their accountability are essential in democratic society. Ukraine still lacks established democratic tradition valued by the bulk of society. Thus arises the problem of formation of such a tradition, including by borrowing positive experience from advanced democracies.

Our state should much more actively introduce useful experience of democratic states in the sphere of civilian control over the military, in particular, regarding publication of the White Paper on defence, appointment of a civilian defence minister, parliamentary approval of defence programmes that require budget funding, etc.

Among the defence sector problems discussed in the context of the election race of political parties and blocs, the issues of effectiveness and democracy of civilian control over the military are rather acute. Their solution impacts both the state of the national defence and the overall success of democratic transformations in the country. In this article, the authors propose their view on the mentioned issues.

Urgency of publication of the White Paper “Defence Policy of Ukraine”

In many democratic countries of the world, governments publish a so-called White Paper that contains information about the state of affairs in the defence sector and guidelines of its development. This publication may elaborate the government’s position on topical issues of military policy, present calculation of expenses on the army activity, review of national approaches to containment or localisation of possible military conflicts and other relevant information. In this way, governments, on the one hand, report to citizens (taxpayers) about their activity and make public the targets of military building, on the other hand — reaffirm the peaceful character of their foreign policy to the world community through demonstration of their openness.

In our opinion, **publication of the White Paper “Defence Policy of Ukraine” by the Government of Ukraine is urgently needed** in the country where civilian control over the military is presently characterised by declarations rather than effectiveness and democracy. It also seems expedient to promptly legislatively define the exhaustive list of documents on the activity of power structures subject to publication, the procedure of their preparation and periodicity of publication. We suggest that this list should include: the White Paper “Defence Policy of Ukraine”; annual reports on defence and law-enforcement budget performance; regular reports of the Verkhovna Rada National Security and Defence Committee about the state of affairs in power structures (prepared on the basis of assessments of MPs); summarised materials of parliamentary hearings on defence issues.



Experts polled by Razumkov Centre agree with this opinion: 95% of them support the necessity of an annual publication of the White Paper "Defence Policy of Ukraine" by the Government¹. Some top executives also agree with this proposal. For instance, First Deputy Secretary of the National Security and Defence Council of Ukraine L. Rozhen stated that at present, "it seems proper to expedite publication of the first issue of the White Paper 'Defence Policy of Ukraine'".

We should remind that the directive on annual publication of the White Paper was signed by President L. Kuchma as far back as January, 1997, but there is still no such a book in sight. By and large, over 10 years of independence Ukraine's Presidents issued more than 300 decrees and directives immediately dealing with the problems of building and reforming the Armed Forces. However, given the present state of Ukraine's army, the effectiveness of their performance is evidently low. At that, the concrete results of execution (or reasons for non-execution) of those documents in many cases were not reported. A few examples may be cited to prove this.

❖ From a Decree of the President of Ukraine: "The Ministry of Defence of Ukraine shall within a month term submit proposals pertaining to **drawing up the State Programme of Development of Armaments and Military Hardware and submit its draft for approval of the Verkhovna Rada of Ukraine by the end of 1998**"². — Unaccomplished.

❖ From a Decree of the President of Ukraine: "Secretary of the National Security and Defence Council of Ukraine Ye. Marchuk **shall provide for the development and submission by July 1, 2001, of the draft Concept (Policy Fundamentals) of National Security of Ukraine**"³. — Unaccomplished.

❖ From a Decree of the President of Ukraine: "The National Institute for Strategic Studies **shall prepare and submit by April, 2001, the Strategy of Introduction of Democratic Civilian Control over the Defence Sector of Ukraine**"⁴. — Unaccomplished.

❖ "Presidential Decree envisages **channelling 25% of the defence budget to funding of research and development and arms procurement**, but the defence agency does not execute these directives of the head of state"⁵.

As well as presidential decrees, laws passed by the Verkhovna Rada and signed by the President are not executed, as illustrated by the following examples.

❖ The Law of Ukraine "On Defence of Ukraine" envisages that "the needs of the national defence of the

state shall be financed solely at the expense of the State Budget of Ukraine within limits annually set by the Law of Ukraine "On State Budget of Ukraine" providing for proper accomplishment of defence tasks but **no less than three per cent of the planned gross domestic product volume**"⁶. — In reality, the Armed Forces of Ukraine themselves earn money to cover a significant part of expenses but even together with budget funding this makes up far less than 3% of GDP.

❖ Laws of Ukraine "On State Budget of Ukraine" have never been executed in full as far as defence expenditures are concerned.

Control on the part of executive and legislative branches over the implementation of the decisions taken in the defence sector may hardly be called effective, with respect to both organisation of and support for defence activity. It should be noted that defence is a sphere of manifestation of long-term, multi-year processes; here, noticeable progress cannot be achieved within a day or even a year. Neglect of the defence sector today means either the risk of losing statehood or shifting responsibility and financial burden to the future generations. The present planning of putting off all results of transformation that will occur after 2005 (the Programme of Reform and Development of the Armed Forces), or 2010 (the Concept of reform of the Armed Forces command structures), or 2015 (the Concept of "professionalism" of the Armed Forces) seems counterproductive, especially given the frequent replacement of heads of ministries and agencies; it is evident that such practice does not help to establish proper responsibility of the leadership for the results of its activity.

Appointment of a civilian defence minister

A civilian defence minister is another indicator showing that society (through constitutional bodies of state power) controls the defence agency, not the military controls itself. The matter is not only in formal civilian status of the minister. For military policy to be sufficiently legitimate, the Ministry of Defence (MoD) should itself become a political (i.e., civilian) body formulating the defence policy of the state and providing for its implementation — as distinct from military administration bodies that in a democratic state should stay out of politics. That is why in democratic countries they are so firm about this issue and believe that **the defence minister must be a civilian person**. The fact of recent appointment of a civilian executive (official of the Administration of the President of Ukraine O. Oliynyk) State Secretary of the Ministry of Defence of Ukraine may in advance be viewed as a positive step.

¹ See: Grytsenko A., Polyakov L., Sungurovskiy M. Military Reform in Ukraine: Expert Opinion Poll. — *National Security & Defence*, 2000, No.2, p.35 — <http://www.uceps.com.ua>.

² See: The President of Ukraine Decree "On the Decision of the National Security and Defence Council of Ukraine of April 17, 1998 'On the State of the National Material Reserve and Mobilisation Readiness'" No.475 of May 14, 1998.

³ See: The President of Ukraine Decree "On the Decision of the National Security and Defence Council of Ukraine of October 31, 2000 'On Implementation of the State Programme of Reform and Development of the Armed Forces of Ukraine through 2005 in 1997-2000'" No.1237 of November 15, 2000.

⁴ Ibid.

⁵ The requisites of this Decree are not known exactly. Source: At Approval of a State Programme of Development of Armament and Military Hardware, the Concepts of Development of the Armed Forces of Ukraine and Armaments Must Be Co-ordinated. — *Defense-Express*, January 30, 2002. — <http://www.defence-ua.com>.

⁶ See: The Law of Ukraine "On Amendment of the Law of Ukraine 'On Defence of Ukraine'", Article 2. — *Vidomosti Verkhovnoyi Rady*, 2000, No.49, p.420.

The experience of democratic states proves the necessity of clear delimitation of functions of civilian (political and administrative) management of troops and purely military, professional control over their activity. Under a classic scheme, a Ministry of Defence led by a civilian person is entrusted with the tasks of formulation and organisation of implementation of military policy. All professional military activity falls under the Chief of the General Staff as the superior military commander who is also the main military advisor to the Minister of Defence and the President — the Supreme Commander-in-Chief of the Armed Forces.

In such a situation, rotation of the political leadership of the state (the President, Parliament, the Government, including the Minister of Defence) does not automatically lead to the replacement of the supreme military command, which guarantees stability in control of the army, continuity in the work of the Armed Forces command and performance of long-term state programmes.

Ukrainian politicians and experts keep an eye not only on the civilian or military status of the Defence Minister but also on the effective mechanism of his nomination, whereby the Verkhovna Rada has no influence whatsoever on this process. There is spread opinion that Ukraine's political system is unprepared for the introduction of the practice of appointment of defence and law-enforcement ministers by Parliament. We believe that **appointment of the Minister of Defence at this stage should already be agreed with Parliament** — this is an important precondition for the stable operation of a democratic state.

It is quite another matter that the concrete mechanism of co-ordination should further the ultimate goal — the effectiveness of defence management. After all, judging from the point of view of effectiveness of the national defence system, appointment of power ministers by Parliament may be assumed justified only in presence of a workable, politically structured Parliament capable of forming a stable and responsible majority united by the community of views as to the strategy of national development. Otherwise, power structures risk becoming hostages of political situations, turning into an instrument of or a small change in the political struggle⁷.

Approval of the State Programme of Reform and Development of the Armed Forces by Parliament

This issue should have been resolved long ago. The Constitution of Ukraine neither requires nor bans to do this — most probably, the practice of “bypassing” the Verkhovna Rada in course of the Programme review is caused by the desire of the President and the Government to avoid parliamentary procedures of decision-making in the sphere that requires rapid



reaction. Meanwhile, formulation and implementation of the State Programme of Reform and Development of the Armed Forces of Ukraine is not an intermediary but a strategic task. Year-long attempts of resolving the problems of the Armed Forces development by efforts of the executive branch (without proper legislative support) failed to produce a positive result. The plans and programmes approved by the President required funding, but it would be illogical to demand from Parliament funds for projects Parliament never reviewed or approved. As a result, the Verkhovna Rada finances the Armed Forces in the amount barely sufficient for provision of the number of personnel it approved with food and clothes. It should be noted that recently, this problem has appeared in the centre of attention, society is becoming aware of the urgency of qualitative changes. We hope that those changes will not take as long as the publication of the White Paper.

In 2000, the Law of Ukraine “On State Prognosing and Working out of Economic and Social Development Programmes of Ukraine” was adopted. It established the norm of budget approval together with a programme of socio-economic development. If we agree that defence is one of the spheres of public activity, **the State Programme of Reform and Development of the Armed Forces should also be approved by the Verkhovna Rada** — as well as other national programmes.

Demonstratively, 90% of the polled experts⁸ also believe that the Verkhovna Rada should approve the State Programme of Reform and Development of the Armed Forces. In our opinion, this would help to resolve a number of problems. First, this would raise the transparency and clarity of the processes in the defence sector thanks to more detailed elaboration of the defence needs and institution of control over the use of budget funds. Second, responsibility of the Verkhovna Rada, the Government, the Ministry of Defence, executors of the

⁷ For instance, speaking at an expanded meeting of the Board of the Ministry of Internal Affairs of Ukraine on January 9, 2002, Minister Yu.Smirnov said: “Recently, political speculators have been more and more trying to involve officers of law-enforcement bodies into political struggle and earn dubious dividends on this”. See: http://cgz.centrmia.gov.ua/official/colleg2001_01.html.

⁸ By the results of a poll of 100 experts during the Round-table “Democratic Civilian Control over the Military in Ukraine: the Path from Form to Substance” held by Razumkov Centre on October 24, 2000.

Programme will increase; parliamentary discussion will become more specific — as a result, better substantiated decisions pertaining to defence budget will be passed. Third, adoption of the Programme by Parliament will impart it a status of the law, will make the items of defence expenditures better protected, which meets the interests of the military, in the first place.

Parliamentary control of arms exports

In Ukraine, quite an effective system of control of goods designed for military purposes exports has been established.

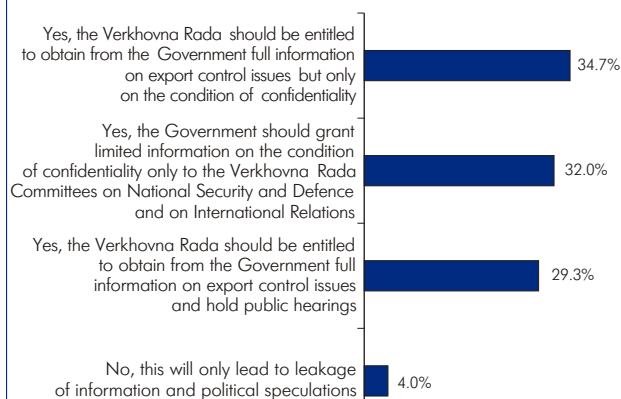
However, this system so far remains unstable and is not legislatively regulated. Activity in the sphere of arms exports and control of such exports is governed only by presidential decrees and governmental resolutions. Constant tension with respect to the issue of arms exports in Ukraine and abroad proves that **it is high time to approve the basic Law “On State Control of International Transfers of Goods Designed for Military Purposes and Dual-use Goods” and implement in Ukraine mechanisms of parliamentary control in the sphere of arms trade.**

The overwhelming majority (96%) of the polled⁹ experts are sure in the necessity of adoption of the Law of Ukraine “On State Control of International Transfers of Goods Designed for Military Purposes and Dual-use Goods” (its draft has already passed expert examination and was praised, in general). At that, more than half (51%) of the polled believe that this Law should be considered immediately, as a priority one, and 45% — stick to the opinion that it should be considered under a standard procedure. Only 4% of experts suggest that the existing by-laws passed by the President and the Government are sufficient for export control.

Similarly, 96% of experts support the establishment of mechanisms of parliamentary control in the sphere of arms trade, but are divided as to the forms of such a control. Almost a third (29%) — suggest that the Verkhovna Rada should be entitled to obtain from the Government full information and hold public hearings on export control issues. Another 34.7% — agree that the Verkhovna Rada should have the right to obtain from the Government full information on export control issues but believe that this should be done confidentially. 32% of experts believe that the Government should give confidential information only to the Verkhovna Rada Committees on National Security and Defence and on International Relations. Only 4% of the polled are not supportive of the idea of parliamentary control and believe that this will lead to leakage of information and political speculations (Diagram “*Should the mechanisms of parliamentary control in the field of arms trade be introduced in Ukraine?*”).

It is noteworthy that as well as in the case of publication of the White Paper, the insufficient transparency on the issues of information of society about the state of

Should the mechanisms of parliamentary control in the field of arms trade be introduced in Ukraine? % of the polled experts



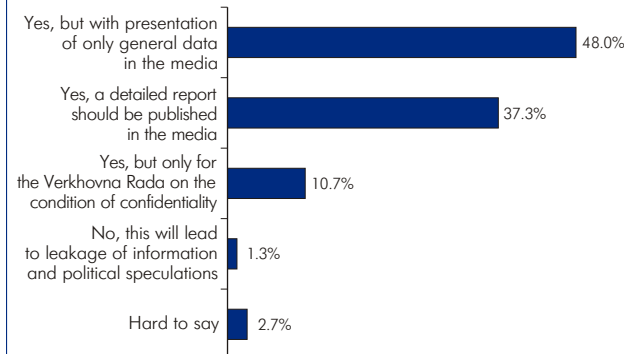
affairs in the sphere of arms exports is now admitted in the high echelons of power. “The analysis of media publications about the alleged violations of Ukraine’s international commitments points to insufficient information of the public about the system of export control established and effective in Ukraine, the activity of the authorities in this sphere”, said First Deputy Secretary of the National Security and Defence Council of Ukraine L.Rozhen¹⁰.

Government report about arms exports

Absence of official information about the work of the export control system in Ukraine sometimes provokes media accusations of violation of international commitments in the sphere of arms trade.

Almost all experts (96%) polled by Razumkov Centre are sure of the expediency of an annual publication of the Government report about arms exports, although they are not united as to the form of such a report. 48% of the polled believe that the report should present only the general data, while 37% — suggest that the report should be

Should annual report of the Government of Ukraine about arms exports be published? % of the polled experts



⁹ Hereinafter, expert assessments on export control issues are cited by the results of a poll of 75 experts during the Round-table “The Development of Export Control System in Ukraine in the Context of Regional Security” held by Razumkov Centre on June 20, 2001.

¹⁰ Speech by Head of the Committee for Military-Technical Co-operation and Export Control Policy under the President of Ukraine L.Rozhen at a press conference devoted to the problems of international arms trade. — *Defense Express*, <http://www.defense-ua.com/rus/news/?id=1968>.

detailed and be published in the media. Another 11% of experts believe that the report should be submitted only to the Verkhovna Rada on the condition of confidentiality (Diagram “Should annual report of the Government of Ukraine about arms exports be published?”).

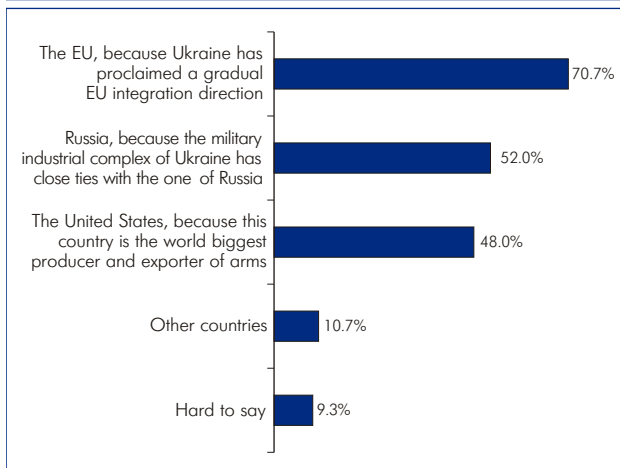
To be sure, all experts are well aware that in this sensitive sphere, some information must be confidential for the sake of the national security, but confidentiality and transparency requirements should be balanced, to that end. Unfortunately, such a balance is not observed in Ukraine — the sphere is almost totally closed, which damages the image of the state and its interests. So far, the executive branch holds an exclusive right to determine the expediency of publication of data in this sphere, on the spur of the moment.

We believe that **annual issue of the Government report about arms exports by the turn of the year, with media publication of summarised data, is expedient and useful for society.** This will increase transparency in the sphere of arms exports and make activity in this field more accurate.

Issue of annual reports is in line with the European standards, where the procedures of arms exports control are more unified and are becoming increasingly transparent throughout the European community. From among the possible variants of foreign experience in the sphere of export control (the EU, Russia, the USA), the EU experience is especially interesting for Ukraine. At present, the EU witnesses the processes of formation of common approaches of the member states to export control, and Ukraine should not lag behind those processes.

Experts polled by Razumkov Centre believe that employment of advanced experience of other countries in the sphere of export control would be very useful for Ukraine. This especially refers to the EU experience — 71% of the polled are sure of it; 52% — believe the Russian experience to be highly useful, 48% of experts suggest that the experience of the USA — the world biggest producer and exporter of arms — would come in handy (Diagram “Whose export control experience is the most useful for Ukraine?”).

Whose export control experience is the most useful for Ukraine?
% of the polled experts



Proceeding from the above, **Ukraine should join EU Code of Conduct for Arms Exports.** Today, concerned state bodies in their activity abide by the provisions of that Code. So, steps should be made for actual accession to it.

Conclusions

One of the key problems in the sphere of civilian control over the military in Ukraine is that in reality, the military sector is not a priority either for the executive or for the legislative branch. This is proved, in particular, by the evidently poor execution of the effective legislation on defence and the state of the Armed Forces.

Another important problem ensuing from the previous one is the unreadiness of the civilian authorities to assume overall responsibility for the organisation of and support for activity in the military sector. This is proved by the absence of adequate reaction to the problems of the military sector on the part of both branches of power and the delay in appointment of civilian heads of power ministries, in particular, a civilian Minister of Defence.

Ukraine still lacks a clear and balanced division of powers in the military sphere between the executive and legislative branches, which seriously impedes reform and development of the Armed Forces of Ukraine.

The positive developments include recognition by the civilian leadership of the necessity of greater transparency of the military sector for society and the Verkhovna Rada, and the increased role and responsibility of the Verkhovna Rada in that sphere.

By and large, positive changes bear a predominantly declarative rather than practical character, although we should hail the very fact of such changes. ■